

### **REMARKS**

Claims 1-13, 33-42 are currently pending in the application. Claims 14-26 and 28-32 are canceled as being drawn to a non-elected Group. Claims 1 and 11 are amended. Claims 33-42 are new.

The amendments to claims 1 and 11 find support in the specification and drawings as originally filed, such as at page 11, lines 3-25. New claims 33-42 are supported by the specification and claims as originally filed. Specifically, new claim 33 is supported by the specification at page 11, lines 21-23; support for claim 34 appears at page 9, line 28 to page 10, line 14 and page 11, lines 21-23. Support for claim 35 appears at page 10, lines 15-23 and page 11, lines 21-23. Claim 36 is supported by the specification at page 10, lines 1-3; page 17, lines 25-29; and page 19, lines 19-20. Support for claim 37 appears at page 9, lines 9-14, and page 9, line 28 to page 10, line 14. The subject matter of claim 38 appears at page 10, line 24 to page 11, line 2. Support for claim 39 appears in the specification at page 11, lines 13-25 and page 20, line 17 to page 21, line 2. Claims 40 and 41 find support in the specification at page 20, lines 8-16 and page 21, lines 3-15, respectively. Claim 42 is supported by the specification at page 10, lines 15-23 and page 11, lines 13-25. No new matter is added.

### **THE INVENTION**

Applicants' invention is a method for stimulating angiogenesis within a muscle by using a delivery system to access, penetrate and enclose within the muscle a body formed of a biocompatible material and dimensionally adapted for being enclosed within the muscle. The body both defines a lumen that is adapted to maintain an open cavity in the tissue sufficient to permit blood pooling and also has external projections configured to create cavities between the tissue and the body, so as to stimulate angiogenesis.

## **THE CITED ART**

### **Altman (U.S. Pat. No. 5,551,427; "Altman")**

U.S. Pat. No. 5,551,427 to Altman discloses an implantable device for eliminating a cardiac arrhythmogenic site, by implanting a small conductor or insulator at the site. The conductor or insulator can be a helix, a straight or curved stake, or a group of stakes.

## **THE REJECTIONS**

### **Claim Rejections Under 35 U.S.C. § 112, First Paragraph**

Claims 12 and 13 were rejected as failing to comply with the written description requirement, on the grounds that the phrase "withdrawing the delivery system from its proximity to the muscle" was not described in the specification.

Withdrawal of the delivery system from the immediate proximity to the muscle after one body has been implanted so as to prepare to implant another body is discussed at page 21, line 16 to page 4, and on page 6, lines 23-24, and is shown in Figs. 7a - 7d. The phrase "withdrawing the delivery system from its proximity to the muscle" is therefore sufficiently described in the specification to comply with the requirements of 35 U.S.C. §112, first paragraph. Furthermore, one of ordinary skill, reading these claims, would understand the plain meaning of the phrase. The rejection should be reconsidered and withdrawn.

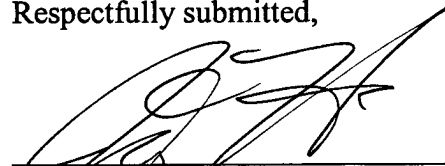
### **Claim Rejections Under 35 U.S.C. § 102**

Reconsideration is requested of the rejection of claims 1-11 as anticipated by Altman. Claims 1 and 11 have been amended to disclose that the body defines a lumen, and also possesses external projections that form cavities between the implanted body and the surrounding tissue, to create cavities within and around the device for blood to pool. Altman discloses no such implant.

Claims 2-10 and new claims 33-42 depend ultimately from claim 1, and are therefore also patentable over Altman. Reconsideration and withdrawal of the rejection are requested.

Applicant submits that all of the claims are now in condition for allowance, which action is requested. Please apply any charges or credits to Deposit Account No. 50-1721, Reference No.: B0410/7280D1.

Respectfully submitted,



Joyce C. Hersh

Reg. No. 42,890

Attorney for Applicant

KIRKPATRICK & LOCKHART

NICHOLSON GRAHAM LLP

State Street Financial Center

One Lincoln Street

Boston, MA 02111-2950

Tel: 617-261-3100

Fax: 617-261-3175

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